as assured by the Prime Minister. Thank you

PROF. SAURIN BHATTACHARYA (West Bengal): I associate myself with the Special Mention of Mr. Fernandes.

SHRI MD. SALIM (West Bengal): Sir, the deadline is tomorrow because an assurance was given. The Government has given an assurance that they would bring it in this Session. (*Interruptions*)

SHRIMATI KAMLA SINHA (Bihar): Sir, the question is that the Minister has already assured that it would be done. So you should instruct the Government that the Bill should be presented here tomorrow itself.

SHRI MD. SALIM (West Bengal): Sir, in your personal capacity you were there when we met the Home Minister and he promised to introduce a Bill in this session itself. So, I hope the Government is going to introduce it tomorrow.

THE VICE-CHAIRMAN (SHRI M. A. BABY): I hope the Home Minister who is present here will take note of the feelings of the whole House and, if possible, before the conclusion of this session or at least during the winter session it should be taken up.

SHRI JOHN F. FERNANDES: The assurance is that it will be introduced in this session. (Interruptions)... The assurance is that it will be passed in the monsoon session.

PROF. SAURIN BHATTACHARRA (West Bengal): Mr. Vice-Chairman, really we have been told that the Bill was ready. But at the last moment owing to some strange pressure, a pressure which had hardly any relation with the linguistic aspect, and in order to just buttress a person who is creating trouble in West Bangal and in order to just satisfy him it is not being done. If that is so, that will be mala fide. I hope that is not the case and at least the Bill will be introduced in this House tomorrow.

SHRI JHON F. FERNANDES: There is no controversy about Konkani and Manipuri. The controversy is with Nepali. We have no objection to it.

SHRI M.D. SALIM: There is no controversy about Nepali language. (interruptions)...

THE VICE-CHAIRMAN (SHRI M. A. BABY): Before I propose to take up the next Bill I would seek the approval of the House to nominate Shri Narayanasamy temporarily into the panel of Vice-Chairmen though statehood is not given to Pondicherry. Now, we will take up the Sick Industrial Companies (Special Provisions) Amendment Bill, 1992.

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**[The Vice-Chairman (SHRI V. NARAYANASAMY) in the Chair]**

## THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) AMENDMENT BILL, 1992

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI DALBIR SINGH): Sir, I beg to move:

> "That the Bill further to amend the Sick Industrial Companies (Special Provisions) Act, 1985, be taken into consideration."

The Sick Industrial Companies (Special Provisions) Act, 1985, was enacted with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a board of experts of the preventive, ameliorative remedial measures that would need to be adopted with respect to such companies and for enforcement of the measures considered appropriate with utmost practical despatch. In accordance with the Act, the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) were constituted and became operational on May 15, 1987 and April, 1987 respectively.

[Shri Dalbir Singh]

The rehabilitation of sick companies has now become strongly institutionalised with the functioning of BIFR thereby bringing in a radical change from the pre-BIFR period. As at the end of May, 1992, 1179 sick industrial companies had registered with BIFR. One hundred and ninety-seven of these were dismissed as non-maintainable, in another 132 cases the companies concerned drew up schemes for their revival in consultation with the financial institutions, in 249 cases BIFR itself framed and approved schemes for rehabilitation and in 172 cases BIFR recommended the winding up of the companies.

During the course of implementation of the Act, several issues have arisen which called for further examination of various provisions of the Act. We have had consultations with BIFR, AAIFR, Reserve Bank of India, financial institutions and representatives of trade and industry, and also kept in view the recommendations of the Estimate Committee of the Lok Sabha as contained in its 15th Report presented on 4.1.1991. Amendments to the Act have accordingly been proposed in relation to its structure and detailed provisions in order to quicken the process of revival of sick industrial companies and facilitate the smooth functioning of BIFR and AAIFR.

The proposed amendments can be broadly classified into three categories. The first category constitutes jurisdictional amendments which seek to detect the sickness of a company at an earlier stage than at present in order that remedial measures can be taken speedily. This is proposed to be done by redefining the categories of the companies coming within the purview of the Act and expanding the options available for revival of rehabilitation, or for winding up. Thus, in the proposed definition the period of registration for "a sick industrial company" has been reduced from seven years as at present to five years, and the criterion relating to incurring cash losses for the two preceding consecutive financial years has been dispensed with. Any industrial company, therefore, registered for not less than five years and which had eroded its net worth completely will be treated as a sick industrial company. Similarly, the requisite period of registration for a potentially sick industrial company is proopsed to be reduced from five years to four years with the criterion relating to erosion of 50 per cent of the company's peak net worth being retained. The proposed amendments would extend the scope of the Act. Further, BIFR is also being authorised to permit amalgamation or reverse merger of a sick industrial company with any other company as an option for rehabilitation of revival. A provision implying 'deemed consent' in cases where participating agencies fail to respond to the draft rehabilitation scheme prepared by BIFR is also being incorporated. These provisions would facilitate quick decisions and more flexibility in the efforts made by BIFR for rehabilitation or revival of companies.

Amendments to enhance the effectiveness of BIFR and AAIFR from the second major category of proposed amendments. These include greater flexibility to BIFR in the selection of an Operating Agency, sterengthening the role of the BIFR in cases of potentially sick companies, including the winding up of ab-initio non-viable potentially sick companies, investing BIFR with powers to give directions to the company not to dispose off assets during the pendency of the case, and powers to BIFR to monitor the implementation of the schemes sanctioned by it. Further, in order to facilitate the speedy implementation of rehabilitation packages after its sanction, single window disbursements of loans and advances have bten proposed.

Lastly, certain amendments have been proopsed in order to remove ambiguities and to strengthen the internal coherence of the Act. Certain provisions have accordingly been redefined or have been clarified.

I recommend the Bill for the consideration of the House.

*The question was proposed.*

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Shri Gopalsinh G.

[Shri Bhubaneshwar Kalia]

Solanki—allotted time is 22 minutes. There are two speakers from your party. Please adjust your time.

SHRI GOPALSINH G. SOLANKI (Gujarat): Sir, this Bill is introduced with a veiw to amending the Sick Industrial Companies (Special Provisions) Act, 1985. At the outset, I would like to read three main features which have been mentioned in the Statement of Objects and Reasons:

> "(a) Jurisdictional amendments which redefine the category of the companies coming within the purview of the Act, and the options which are available for revival, rehabilitation or winding up of sick industrial companies;
>
> (b) amendments to enhance the effectiviness of BIFR;
>
> (c) amendments which seek to remove certain ambiguities and strengthen internal coherence of the Act by redefining certain provisions which are clarificatory in nature."

I would like to submit that when this Act was enacted in 1985, it was an Act known as the Sick Industrial Companies Act. Now this particular amendment which has been brought here says about repealing the word 'Industrial'. Now it will be the Sick Companies Act. When the whole object is going to be changed by the amendment, what is the need to bring such an amendment? It debars particular industries. May I know from the Minister, is there any ulterior motive behind this to avoid conflict between the workers and the Government? Or is it that the workers who are covered under the Industrial Disputes Act of under the Industrial Relations Act will not be affected? Now the whole Act was meant to vest power in the BIFR. The BIFR could not be successful for 7 years. It acted as a bureaucratic institution with all bureaucratic procedures. But it has not adopted any commercial views. How many cases has it examined within these seven years after the introduction or enactment of this particular Act? We know that there are more than 3 lakh units which are reported to be sick. These include the small scale industries, the public sector undertakings and other industries. Out of these units, only 1035 cases have been registered with the BIFR. The BIFR has not been successful in finalising all these cases. It could finalise only 380 cases. At the same time I would like to ask what the reason for sickness is. Why was this Act brought? According to the law, the sickness of an industry is defined as, "An industrial unit or company which fails to generate the internal surplus on a regular basis and depends for its survival on the constant infusion of funds from outside". This is when an industrial unit is considered to be sick. Yesterday there was a statement. I should not say that it was a very bad statement. But it was a statement which was far from truth. It was made by the Minister of State in the Ministry of Finance. The statement said that the Government is not going to close down the sick units. This is far from truth because I have a report here. I will read it. It appeared in the *Financial Express* of 19 December, 1991: "Recently our Finance Minister made a brave statement in Bangkok for the annual IMF World Bank meet that he is in favour of closing down unviable public sector units and he also said that the sick public sector undertakings will be referred to the BIFR for taking a final decision on them". Of course, the Act, prescribes it. But this was the policy which was going to be adopted by the Government. It was there in the mind of the Minister. The policy was there on his mind and before framing it there was a statement that he would close down the sick units, but which he could not. Even after that when a question was raised yesterday before the House, Mr. Rameshwar Thakur said that there was no intention to close down the sick units. Now what are the reasons for sickness? What is the investment made by the Government so far? According to a report there are more than 58 sick public sector undertakings. They are reported to be sick and they involve an amount of not less than Rs. 10,000 crores. If they are to be revived, the nation would require not less than Rs. 15,000 crores every year. It has been the policy of the Government to either go to the World

[Shri Gopalsinh G. Solanki]

Bank or the IMF for the grants on concessional rates. Is it not a wastage of public savings or the savings of the common class and the tax-payers? Are we to spend this kind of money? This is the kind of capital that is wasted every now and then. Has the Government ever enquired or made any investigation as to why the companies go sick? One reason for the sickness of a concern is mismanagement and the diversion of funds to some other purpose after seeking loan by the particular holders. Not only that, throughout the country, all the public sector units are handled by the managing directors who are bureaucrats. Once they become the managing directors, we find that these units go sick because there is no accountability, especially in our country, there is no accountabiilty as far as the IAS officers are concerned. They don't care whether these units make profits or not. Even if there is a profit-making public sector unit, there would only be a minimal profit. What should be done for this? I am not in favour of closing down these sick units. But what I would suggest is that these units should be handed over to Workers' Cooperatives. This would benefit the workers. But these sick units should not be given to them in such bad conditions. They should be provided with adequate funds and raw materials also and for this, the Government should make a particular Budgetary provision for sick units. They should be provided with the required funds so that with the help of Cooperative Societies' administration, these units would become profit-making ones. There have been many talks going on about what to do with the sick units. On the one hand, there has been a talk about privatisation. But this Government has failed and so also the Communist Party which has been ruling West Bengal for the last 15 years and Kerala inttrmittently and alternatively. These Governments have also failed to achieve its targets. They talked much about the welfare of the workers but could not do anything. Similarly, the Janata Dal Government which ruled at the Centre and has been ruling in two States, also failed. Now what could be done for this? I would say that it has been the policy of the Government to take over sick units. This has started right since 1960.

The first mill to be taken over by the Government was Elgin Mills which had 11,000 workers. The second was in 1970 when several engineering units were taken over with 40,000 workers. Then after that, the textile mills which were found to be sick were taken over by the National Textiles Corporation. This involved no less than 1,42,814 workers. And then in 1975 also, we saw that Burn Standard & Company was taken over and then it was closed. It involved no less than 18,000 workers. In 1985 the sick units reported were 48 involving 2,95,000 workers. And at present, no less than 58 units are reported to be sick. May I know from the Government whether the Government is going to waste money, the national capital, like this and whether they are going to entrust the administration of these units to the BIFR? As stated in the Act also, there will be some operating scheme or a scheme by the operating agencies under Sections 6, 8, 19 and 20 if I may say. Under that scheme, those operating agencies will be directed to pay the amount as required by the CEGAT If such is the fact and the powers are vested in the BIFR, who will report the matter? The BIFR is an appellate authority. The BIFR is going to be headed by a High Court Judge, who has put in not less than five years of service. So why should it go to the High Court? Why not make the Supreme Court the appellate authority for this? The whole amendment does not show any time limit for coming to the conclusions, and for that I would like to suggest that there must be some limitation so far as the duration of the enquiry and the announcement of the decision are concerned. With these words, despite the defect, I support the Bill.

Thank you very much, Sir.

SHRI BHUBANESWAR KALITA (Assam): Thank you, Mr. Vice-Chairman, for giving me this opportunity to support this dynamic Amendment brought by the Banking Minister in this House. This Bill was originally enacted for timely detection of sick and potentially sick industrial companies. This is a dynamic attempt of the Government to give a new life to the public sector units, particularly the sick units. We are all concerned

that these units should be strong and viable and, therefore, the Bill will have to take proper care of the opinions of the three concerned parties—the labour organisations, the management and the Government. In doing so, we have to be pragmatic in our approach. It is a fact that we are lacking a foolproof system to stop misutilisation of our valuable finance. We lack in periodic monitoring of the huge finance and its management. This situation would not have arisen if our Members had been more vigilant and the Government machinery had been more vigilant and, in fact, a lot is happening because something is lacking in the system and it has necessitated this Amendment Bill today.

This Bill will go a long way to correct these lapses. There are different factors leading to sickness besides the peripheral factors. Banks and financial institutions are also a cause for some sickness. The Bill states that an industry, having at the end of any financial year accumulated losses equal to or exceeding its net worth, shall be deemed to be a sick industrial company. Here I want to draw the attention of the hon. Minister because he is also the Minister for Banking about some difficulties faced by the units in our areas and particularly the small units in our areas. Not only public sector units but some other units also suffer and it leads to ultimate sickness because there are certain measures which are not implemented properly in those areas. I can give an example. The RBI has issued a circular for credit squeeze in respect of some units. But they have made an exception in the case of the small units. In implementing the provisions of that circular in the whole North-Eastern Region in general and in my State of Assam in particular, I would say that it is not done properly by the authorities. I wish to draw the attention of the Minister, who is also the Minister in charge of Banking, to this and I would request that he should take care of this.

Sir, I also want to utilize this opportunity to request the Minister for credit relaxation for the units in the North-Eastern Region, particularly for Assam, because we are all aware of the situation prevailing in that region. Though the Assam problem is being dealt with, Assam is always clubbed with Jammu and Kashmir and Punjab. Whenever we discuss the situation, political and economic, in the country, we group Punjab, Jammu and Kashmir and Assam together. So, the commercial banks have given some credit relaxation to the borrowers and customers of the commercial banks in Punjab and Jammu and Kashmir due to the exceptional circumstances there. These relaxations relating to margins, service charges, rescheduling of payment of term loans, non-levy of penal interest, non-charging of compound interest, grant of additional credit limit, etc. are applicable in these two States. Here the Reserve Bank of India is making an exception in the case of Assam. When we club all these States together, why do they make an exception? Do they think that the situation in Assam is different from that in these two States? If the situation in Assam is different, then, why do their officers do not like to go there? Why is a special allowance being paid to the officers posted in that region, particularly in Assam? I am putting these questions to the Minister because he is also the Minister in charge of Banking, though I know I am going a little out of context in this matter. Even then I am requesting him to give this credit relaxation facility to Assam also which is also a troubled States.

As I said a minute before, our units in that region become sick before they are even launched! It is because the banks there, even the regional offices of the banks there, do not have the power to sanction since they have got only limited powers to sanction term loans, etc. to the units, So, the entrepreneurs who go from pillar to post become sick in their minds first even before launching a project! This is true not only in the case of small units, but also in the case of State-sector units. The senior officers posted there do not want to go there and the officers posted there are having limited powers and they cannot sanction the loans which are required by the units. Not only that,

[Shri Bhubaneshwar Kalita]

Even for the enhancement of the working capital, their powers are limited.

I want to utilize this opportunity to request the Minister to take note of these factors and see that the industrialists or the industrial units, whether in the private sector or in the State sector, do not suffer because of this.

Sir, the various provisions in the Act and also the present Bill will facilitate rehabilitating or winding up the sick industrial companies and this will do away with complexities of making a sick unit more sick. Lastly, Sir, a number of families and institutions are involved in industrial relations. There is always a concern for the revival of the sick units. This Bill, with ths amendment, will quicken the process of revival of suck units.

With these words, Sir, I request the Government to take a serious note of the grievances of our region and attend to them. Thank you, Sir.

SHRIMATI KAMLA SINHA (Bihar): Sir, it is a Bill amending the parent Act, i. e. Sick Industrial Companies (Special Provisions) Act, which was passed in 1985. Through that Act, a body was created, and that is the Board of Industrial and Financial Reconstruction, which is in short called the BIFR. We know that there are certain provisions in that pavent Act that the BIFR would undertake steps for rehabilitation of those units only which have been functioning for seven years and which have failed to produce any viable results for two successive years and have been continuously sick. So, this present Bill has a provision to reduce this period from seven years to five years. Moreover, the BIFR and the SICA, 1985, did not look after the public sector undertakings and the Government factories. So, by this amendment, the Government to bring within its fold the public sector undertakings and the Government factories. Now, there is a certain provision in this Bill to amend Section 18 of the parent Act. Clause 18, sub-clause (c) (i) says that "the scheme prepared by the operating agency shall be examined by the Board..." etc. etc. I would like to know from the hon. Minister as to who this operating agency will be. Then, tnere are other provisions also to which I will come back later.

Sir, we know that the BIFR was formed under the SICA which was enacted in 1985, in the public interest. So, the BIFR is a quasi-judicial body. It came into being after 1986. In 1991, the BIFR came out with a Report, and the caption of the Report was: 'Industrial Sickness—Case Studies'. This Report overviews the problems which are faced by the BIFR. In this Report, the BIFR had raised certain points regarding the limitation of its jurisdiction, the functional problems, and other issues. According to this amended Bill, only those units are referred to the BIFR which are in existence for five years. The period has now been reduced from seven years to five years. And those units which have incurred cash losses in two immediately preceding years will be referred to the BIFR. But these are all mortuary cases where rehabilitation is difficult. In my opinion, those cases should be referred to the BIFR where rehabilitation is easir.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): There is an announcement to be made. Shri Madhavan will present the Report of the Committee on Rules.

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## REPORT OF THE COMMITTEE ON RULES

SHRI S. MADHAVAN (Tamil Nadu): I beg to present the Report of the Committee on Rules.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): There is another announcement. The Minister of